

Fresno, California

February 10, 2009

The City Council met in regular session at the hour of 8:30 a.m. in the Council Chamber, City Hall, on the day above written.

Present:	Andreas Borgeas	Councilmember
	Lee Brand	Councilmember
	Mike Dages	Vice Chair
	Henry Perea	Councilmember
	Blong Xiong	Councilmember
	Paul Caprioglio	Acting Council President

Absent: Cynthia Sterling Council President (out of State)

Andy Souza, City Manager
Bruce Rudd, Assistant City Manager
Jim Sanchez, City Attorney
Becky Klisch, City Clerk
Yolanda Salazar, Assistant City Clerk

Larry Arce of the Fresno Rescue Mission gave the invocation and Acting President Caprioglio led the Pledge of Allegiance.

RESOLUTION OF COMMENDATION TO THE PURCHASING DIVISION FOR RECEIVING THE ACHIEVEMENT OF EXCELLENCE IN PROCUREMENT AWARD FOR 2008

PROCLAMATION OF "LEWIS GREEN DAY" - PRESIDENT STERLING AND ACTING PRESIDENT CAPRIOGLIO

PROCLAMATION OF "CELEBRATE MARRIAGE WEEK" - MAYOR'S OFFICE

PROCLAMATION OF "NATIONAL ENGINEERS WEEK" - MAYOR'S OFFICE

The above resolution and proclamations were read and presented.

APPROVE MINUTES OF FEBRUARY 3, 2009:

On motion of Councilmember Dages, seconded by Councilmember Brand, duly carried, RESOLVED, the minutes of February 3, 2009, approved as submitted.

COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Dages (1) announced at the 86th Annual Western Fair Association the Big Fresno Fair won 15 awards and was also chosen the Featured Fair for 2009 which he stated was a huge and prestigious honor and elaborated further; and (2) questioned if Downtown Community and Revitalization staff has contacted Gottschalks or planned on contacting them stating about 5,000 jobs would be lost if the company "goes under", with City Manager Souza stating it he would look into that.

Councilmember Xiong (1) reported his attendance the API Commission meeting in Los Angeles this past week; (2) congratulated new downtown business One Global on their opening; (3) commended the Fresno County public library on their read-a-thon event; and (4) commended Wise Guys Pictures Production for all their work and effort and for highlighting Fresno.

for council members to digest agenda materials as well as meet with staff and others as necessary, and requested the resolution be brought back on February 24th or March 3rd. City Attorney Sanchez advised the resolution changing the meeting day would be a single enactment effective upon adoption and would not be subject to the mayor's veto, and added an amendment to the FMC would also be necessary if the timing for submission of agenda materials is changed.

Councilmember Xiong left the meeting at 8:54 a.m. and returned later in the meeting.

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APPROVE AGENDA:

(10:00 A.M.) CONTINUED HEARING TO CONSIDER APPEAL FILED BY GARY MCDONALD AND FORMER COUNCILMEMBER DUNCAN ON THE TRACT MAP AND THE CUP APPLICATION, APPEALING THE PLANNING COMMISSION'S DENIAL OF VESTING T.T. MAP NO. 5933/UGM, CUP NO. C-08-59, AND ENVIRONMENTAL FINDINGS, FILED BY GARY G. GIANNETTA ON BEHALF OF GARY MCDONALD HOMES, N. FRIANT ROAD AND E. COPPER AVENUE WITHIN THE COPPER RIVER RANCH MASTER PLANNED COMMUNITY **(Continue to March 24, 2009, at 10:15 a.m.)**

Continued as noted.

On motion of Councilmember Dages, seconded by Councilmember Borgeas, duly carried, RESOLVED, the **AGENDA** hereby approved as submitted, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Caprioglio
Noes	:	None
Absent	:	Sterling, Xiong

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ADOPT CONSENT CALENDAR:

Matt Greseheimer, Regional Vice President for Ace Parking Management (APM), thanked the city for the opportunity to manage FYI the past five years, spoke to Item **1-A** stating staff decided to award the contract to a competitor and he felt staff's review of each company was subjective, stated there was a chance APM scored low because they followed the RFP exactly as written and explained, and requested Council remove the item from consent and look closer at the issue.

Councilmember Dages pulled Item **1-A** for separate discussion/action, and registered a "no" vote on Item **1-I**.

(1-B) APPROVE A PROFESSIONAL CONSULTING AGREEMENT WITH CLINE, SMULL, HAMILL, QUINTIERI ASSOCIATES (CSHQA) IN AN AMOUNT NOT TO EXCEED \$160,000 FOR FYI TERMINAL IMPROVEMENTS, AND AUTHORIZE THE DIRECTOR OF AVIATION TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

(1-C) **RESOLUTION NO. 2009-37** - AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN A QUITCLAIM DEED ON BEHALF OF THE CITY RELATED TO RESOLUTION NO. 2009-14 WHICH ORDERED THE VACATION OF A PORTION OF N. STATE STREET NORTH OF W. FAIRMONT AVENUE

(1-D) **RESOLUTION NO. 2009-38** - 67TH AMENDMENT TO AAR 2008-162 APPROPRIATING \$352,400 FOR MAINTENANCE OF CFD NO. 2 AND ELIGIBLE DEVELOPER DEPOSIT REFUNDS FOR ACCEPTED TRACTS

(1-E) **RESOLUTION NO. 2009-39** - AUTHORIZING THE SUBMISSION OF APPLICATIONS FOR, AND ACCEPTANCE OF, GRANT FUNDS FROM THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION - 2008-2009 URBAN FORESTRY INVENTORY GRANT PROGRAM, AND AUTHORIZE THE EXECUTION OF DOCUMENTS BY THE PUBLIC WORKS DIRECTOR OR DESIGNEE

(1-F) **RESOLUTION NO. 2009-40** - INTENT TO ANNEX FINAL TRACT NO. 5498 AS ANNEXATION NO. 37 TO CFD NO. 11 AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES, AND SETTING THE REQUIRED PUBLIC HEARING FOR 3/3/09

(1-G) **RESOLUTION NO. 2009-41** - AUTHORIZING SUBMISSION OF APPLICATION FOR, AND ACCEPTANCE OF,

GRANT FUNDS FROM THE CALIFORNIA TRANSPORTATION COMMISSION-ADOPTED STATE/LOCAL PARTNERSHIP PROGRAM (SLPP), AND AUTHORIZE EXECUTION OF DOCUMENTS BY THE PUBLIC WORKS DIRECTOR OR DESIGNEE

(1-H) DOWNTOWN PROPERTY-BASED IMPROVEMENT DISTRICT (PBID) - APPROVE CONSENT TO ASSIGNMENT AND ASSUMPTION OF GRANT FUNDING AGREEMENT AS AMENDED, FROM ONE BY ONE LEADERSHIP TO THE FRESNO REVITALIZATION CORPORATION, AND AUTHORIZE EXECUTION OF RELATED DOCUMENTS

(1-J) BILL NO. B-5 - ORDINANCE NO. 2009-5 - AMENDING THE 2025 FRESNO GENERAL PLAN AND MODIFYING THE FRESNO COUNTY OFFICIAL PLAN LINE (OPL) FOR CLINTON AVENUE WEST TO FREEWAY 99 AND YALE AVENUE WEST OF WEBER AVENUE

On motion of Councilmember Brand, seconded by Councilmember Borgeas, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Caprioglio
Noes	:	None
Absent	:	Sterling, Xiong

(1-I) BILL NO. B-4 - ORDINANCE NO. 2009-4 - ADOPTING TEXT AMENDMENT NO. TA-08-02 AND ENVIRONMENTAL FINDING, AS RECOMMENDED BY THE PLANNING COMMISSION, AMENDING THE TEXT OF THE ZONING ORDINANCE RELATED TO THE DEFINITION OF DRIVE-THROUGH CAR WASH

On motion of Councilmember Brand, seconded by Councilmember Borgeas, duly carried, RESOLVED, the above entitled Bill No. B-4 adopted as Ordinance No. 2009-4, by the following vote:

Ayes	:	Borgeas, Brand, Perea, Caprioglio
Noes	:	Dages
Absent	:	Sterling, Xiong

CONTESTED CONSENT CALENDAR:

(1-A) AWARD A CONTRACT TO STANDARD PARKING CORPORATION, A DELAWARE CORPORATION, FOR OPERATION AND MANAGEMENT OF THE PUBLIC AND EMPLOYEE PARKING LOTS AT THE FYI AIRPORT

ACM Rudd, Purchasing Manager MacDonald, and Ace Regional Vice President Matt Greseheimer responded to questions and comments of Councilmember Dages relative to the city's efforts to keep money in Fresno, local preference, why a Delaware Corporation was chosen over a Fresno corporation, if Ace's performance was poor, why Ace felt the process was unfair, if the local preference ordinance applied here, concern with staff's recommendation in light of the time spent on local preference, the lack of information on the other proposals submitted and non-support for staff's recommendation, and the appeal process and the protest letter Ace sent to the Airports Director. Upon question, City Attorney Sanchez requested Council take a 5-minute break so he could review the RFP process stating he was not aware there was this issue of a potential appeal.

RECESS - 9:09 A.M. - 9:15 A.M. Councilmember Xiong returned to the meeting.

Mr. Sanchez stated he reviewed the letter from Ace dated February 4, 2009, from President Steve Burton which raised a couple of questions regarding the process and requested some additional records be provided, and stated although there was a question as to whether that letter constituted a challenge to the process or an appeal and Ace had not yet received the information requested Council continue this matter to February 24th so that the information could be provided to Ace so all their questions are answered.

On motion of Councilmember Perea, seconded by Vice Chair Dages, duly carried, RESOLVED, Item **1-A** continued to February 24, 2009, to allow staff to provided information to Ace Parking Management as requested by letter, by the following vote:

Ayes : Borgeas, Brand, Dages, Perea, Xiong, Caprioglio
Noes : None
Absent : Sterling

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(9:00 A.M.) PUBLIC COMMENT - UNSCHEDULED ORAL COMMUNICATIONS:

Rob DeFrees, 119 N. Calaveras, spoke to the hardworking public employees and the need to treat them with consideration and kindness, and commended local government for encouraging marriage.

Jay Matthew, 924 N. San Pablo; Michael Esswein, 900 Van Ness (**2 - 0**); Charles Kruegman, 1237 P Street; Scott Maldonado, 928 N. Van Ness; Beverly Senkowski, 9109 N. Woodlawn; and Vickye Ashton, 928 N. Van Ness, all referenced the earlier "Celebration of Marriage" proclamation and stated they supported marriage, were opposed to divorce, the proclamation was insensitive as gay citizens were excluded from marriage, equality was needed for all, the city needed to recognize the needs and rights of all its' citizens, the timing of the proclamation (Valentines week) was insensitive as gay marriages were currently in limbo, the fight to get married or keep their marriages would continue, and/or marriage was a heterosexual privilege, the proclamation was rubbing salt in the wounds of citizens not afforded the right of marriage, and the message was some people were worthy of marriage and some were not.

Paul Hurlbut, 4701 W. Swift, spoke to Fire Station 16 in the Ashlan/Cornelia neighborhood and the problem of communication.

Rick Morse spoke to his attempts to meet with the city attorney's office (on medical marijuana), to the city of Anaheim case, and to attempts to put him out of business, and shared a story of a person with cancer who requested his help. City Attorney Sanchez stated his office has had a number of discussions with Mr. Morse, Mr. Morse disagreed with the legal opinion given by his office on the current law in terms of the city's ordinance and land use provisions and explained, and at this point he felt there was no further reason for his office to meet with Mr. Morse. Mr. Morse stated his objection was the city attorney's office was meeting with people who want to put him out of business but are not meeting with him and have not listened to every fact of his case.

Paula Savino spoke to abuse of chickens and turkeys and all animal violations.

Sherry Smith submitted photographs into the record and spoke to the Ashlan Village gated community and loss of safety for village residents and the community.

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(9:30 A.M. "A") AWARD A CONTRACT TO PROTECH TURBINE SERVICES, LLC, OF HOUSTON, TEXAS, IN THE AMOUNT OF \$1,347,200 FOR THE REPAIR AND OVERHAUL OF TWO (2) GAS TURBINE ENGINES FOR THE GENERATION OF ELECTRICITY AND STEAM, AT THE FRESNO-CLOVIS REGIONAL WASTEWATER RECLAMATION FACILITY

1. RESOLUTION NO. 2009-42 - APPROVING THE REALLOCATION OF \$1,377,200 FROM PREVIOUSLY APPROVED CAPITAL PROJECTS FOR THE REPAIR AND OVERHAUL OF THE TWO GAS TURBINE ENGINES

Assistant PUD Director Hogg reviewed the issue, all as contained in the staff report as submitted, and recommended approval.

Councilmember Brand advised he toured the facility and encouraged all members to do so and made a motion to approve staff's recommendation, which motion was seconded by Councilmember Dages.

Mr. Hogg responded briefly to questions of Councilmember Borgeas relative to the engines, whether there was any insurance or product guarantee on engine failure, and if the city carried any type of insurance.

On motion of Councilmember Brand, seconded by Councilmember Dages, duly carried, RESOLVED, the subject contract

awarded to Protech Turbine Services, LLC as recommended, and the above entitled Resolution No. 2009-42 hereby adopted, by the following vote:

153-43

2/10/09

Ayes : Borgeas, Brand, Dages, Perea, Xiong, Caprioglio
Noes : None
Absent : Sterling

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(9:30 A.M. "B") UPDATE ON CITY'S FISCAL YEAR 2009-2010 BUDGET

City Manager Souza stated this had been a long, thorough, pro-active process that started back in December and thanked city departments and budget staff for stepping up and for all their work; noted there would be a reduction of \$8.8 million to the current general fund for the rest of this fiscal year and advised along with the existing \$2.7 million surplus there would be a carryover anticipated to be between \$11.5 and \$11.6 million for next year's budget; stated although the carryover was good news the bad news was the city will still be out balance by about \$4.3 million for next year and advised staff would continue to work on that number; spoke to the specific take-aways from the \$8.8 million reduction, the freezing of vacant positions, and the lay-offs of temporary staffing; thanked Councilmember Dages for asking to include his office but advised that was not in this set of scenarios and explained, and added staff would be reporting on the status of the enterprise departments on February 24th as the focus this date was on the general fund; and elaborated further on the Contingency Plan Status schedule, all as contained in the material as submitted **(3 - 0)**. Acting President Caprioglio commended Mr. Souza on the report.

Extensive Council discussion ensued. Mr. Souza responded to questions/comments of Councilmember Brand and/or clarified issues relative to the importance of being proactive and not reactive, how the FY10 \$4 million shortfall will be made up, if keeping vehicles longer will result in additional maintenance costs, annual payroll costs and request for information in the future on amount for temporary positions, for vacant positions not filled, and for step-increases, the economic stimulus package, capital projects' impacts on the budget, and the need to make sacrifices, if any, from the top to the bottom. Councilmember Dages thanked Mr. Souza and budget staff for their work, noted last year revenues came in and were placed into contingency and commended staff for doing that, stated there is always a lot of media talk about the number of unemployed but noted 90.3% of the people in the state were still employed, commended staff for watching the pennies and not looking for one quick fix, questioned if staff was working with employee association representatives and if they were aware of where the city was at (with Mr. Souza responding affirmatively), and commended staff on the well put together and detailed report and for keeping Council informed. Mr. Souza, Deputy Chief Aranaz, PARCS Director Cooper and Public Works Director Weimiller responded to questions/comments of Councilmember Perea relative to the deferred opening of Fire Station 19/if there were plans to open the station, soft staffing at fire stations and how that will affect service, the reductions in PARCS programs (i.e. Fresno Connect and science programs), which sites will no longer offer PARCS programs, if hours will be limited/if there will be a reduction in service, reductions (of hours) currently planned at various sites, request PARCS provide a list of planned program reductions, importance of serving those in low-income areas and request staff inform council which neighborhoods will no longer receive the current amount of services, the public works plan checks and traffic planning programs including if staff will be laid off and how programs will be impacted, project turn-around time, and the tree damage concrete program.

Discussion continued with Mr. Souza, Chief Dyer and City Attorney Sanchez responding to questions/comments of Councilmembers Borgeas, Perea and Xiong and/or clarifying issues relative to funding level with the various pension and retirement obligations, if staff was currently trying to address/offset the FY10 \$4 million hit, retirement fund contributions, current year expenditures, soft staffing and current overall fire service provided/above minimum staffing, soft staffing coming into play minimally, the reallocation of O&M to the Asset/Forfeiture (A/F) fund, A/F protocol, if the state is able to tap into a percentage of seized funds, if Fresno County utilizes federal or state seizure law, acknowledgment of city manager discretion to move money around an adopted budget to insure balance/concern with soft staffing/and at what point can Council weigh in on that issue, need to insure public safety is #1 and request the city attorney provide a written opinion on the issue, the suspension of the Major Narcotics Unit and how/if that will affect the A/F fund, if other fire stations will be impacted besides FS 19, if fire stations under construction will proceed on schedule, the PARCS aquatics program and planned school pool openings, impacts to the Neighborhood Quality of Life and Gang Prevention Initiative, if these were final mid-year numbers, intent of this report **(4 - 0)**, and implementation by the administration.

Barbara Hunt expressed concern with private enterprise and conflict with the City Council acting as the Redevelopment Agency, displaying material on the overhead.

There was no further discussion.

153-44

2/10/09

(9:30 A.M. "C") APPROVE SECOND AMENDMENT TO THE MOU BETWEEN THE CITY, ROEDING PARK PLAYLAND, FRESNO STORYLAND, AND FRESNO'S CHAFFEE ZOO CORPORATION REGARDING THE ROEDING PARK MASTER PLAN EIR

Assistant PARCS Director Haynes reviewed the issue, all as contained in the staff report as submitted, and advised the Zoo Board would be voting on this matter Thursday, everything was contingent upon their approval, and if any significant changes are made staff would bring them back to Council.

Barbara Hunt spoke in support.

On motion of Councilmember Xiong, seconded by Councilmember Dages, duly carried, RESOLVED, the above entitled Second Amendment to the MOU hereby approved, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Xiong, Caprioglio
Noes	:	None
Absent	:	Sterling

The City Council recessed at 11:06 a.m. and convened in joint session with the Redevelopment Agency.

(9:45 A.M.) JOINT MEETING WITH THE REDEVELOPMENT AGENCY

APPROVE MINUTES OF JANUARY 6, 2009

On motion of Acting President Caprioglio, seconded by Councilmember Xiong, duly carried, RESOLVED, the Agency minutes of January 6, 2009, approved as submitted.

(‘A’) JOINT RESOLUTION NO. 2009-43/1735 - DESIGNATING POSITIONS WHICH SHALL BE SUBJECT TO THE CONFLICT OF INTEREST CODE AND DEFINING CATEGORIES OF DISCLOSURE FOR SUCH POSITIONS

City Clerk Klisch gave a brief overview of the issue, all as contained in the staff report as submitted.

Barbara Hunt spoke to the issue.

On motion of Councilmember Brand, seconded by Councilmember Borgeas, duly carried, RESOLVED, the above entitled Joint Resolution No. 2009-43/1735 hereby adopted, by the following vote:

Ayes	:	Borgeas, Brand, Caprioglio, Dages, Perea, Xiong
Noes	:	None
Absent	:	Sterling

SACRAMENTO TAKING OF CITIES' REDEVELOPMENT FUNDS - COUNCILMEMBER BERGEAS (*Not on the agenda*)

Councilmember Borgeas spoke to and presented questions relative to Sacramento's taking of money from local redevelopment agencies, the suit initiated by two other cities, and Fresno joining in an amicus brief, with City Attorney Sanchez advising his office did inquire about joining that effort but due to critical timing the litigants had no desire to have amicus step in, and advised Council to allow that litigation to proceed at this time and see what the trial court decision is, and elaborated further on the

issue and responded to additional questions of Councilmember Borgeas. Chair Xiong suggested this matter be scheduled on a future agenda so staff can provide answers to all questions, with Mr. Sanchez stating he would provide Council with a tray memo and recommendation.

The joint bodies adjourned their meeting at 11:16 a.m. and the City Council reconvened in regular session.

153-45

2/10/09

(10:15 A.M.) CONTINUED HEARING ON REZONE APPLICATION NO. R-05-107 AND ENVIRONMENTAL FINDINGS FILED BY RICHARD AND DONNA STOECKEL, PROPERTY LOCATED ON THE NORTH SIDE OF E. AUSTIN WAY TERMINUS, WEST OF N. CHESTNUT AVENUE (4701 E. AUSTIN WAY)

1. CONSIDER AND ADOPT E.A. NO. R-05-107/TPM-2008-06, DETERMINATION OF INITIAL STUDY TO FILE A FINDING OF CONFORMITY TO THE GENERAL PLAN MEIR

2. RESOLUTION NO. 2009-44 - OVERRIDING THE AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY WITH THE FRESNO COUNTY AIR TERMINAL LAND USE POLICY PLAN

3. BILL NO. B-6 - ORDINANCE NO. 2009-6 - AMENDING THE OFFICIAL ZONE MAP TO REZONE FROM R-A TO R-1-B

Acting President Caprioglio announced the time had arrived to consider the issue and opened the hearing. Planner Tackett gave a PowerPoint presentation which included a Vicinity Map, Aerial Photograph, Plan Land Use Map, Exhibit Demonstrating Proximity to FAT, the FYI Airport and Environs Plan, Alternative Analyses and Land Use Measures, Additional Vicinity Exhibits, Rezone Application No. R-05-107 and Conditions of Zoning, Vesting Tentative Parcel Map, and Staff's Recommendation, all as contained in the staff report as submitted.

Speaking to the issue were: Barbara Hunt; and Dan (last name inaudible) with Tri City Engineering, representing the applicant, who stated he agreed with staff's recommendation and requested approval.

Upon call, no one else wished to be heard and Acting President Caprioglio closed the hearing.

On motion of Acting President Caprioglio, seconded by Councilmember Brand, duly carried, **RESOLVED**, the environmental finding for the subject E.A. approved, the above entitled Resolution No. 2009-44 hereby adopted, and the above entitled Bill No. B-6 adopted as Ordinance No. 2009-6, by the following vote:

Ayes	:	Borgeas, Brand, Dages, Perea, Xiong, Caprioglio
Noes	:	None
Absent	:	Sterling

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:

(‘A’) ANTICIPATED LITIGATION - SIGNIFICANT EXPOSURE TO LITIGATION: PACIFIC GAS AND ELECTRIC COMPANY V. CITY OF FRESNO

(‘B’) EXISTING LITIGATION - CASE NAMES:

1. COF V. MICHAEL DEAN COONS

2. WOODWARD PARK HOMEOWNERS ASSOCIATION, INC. V. COF, DEWAYNE ZINKIN, ET AL.

The City Council met in closed session in Room 2125 at the hour of 11:27 a.m. to consider the above matters and the meeting was adjourned thereafter.

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 11:50 a.m. having arrived and hearing no objection, Acting President Caprioglio declared the meeting adjourned.

Approved on the ____24th____ day of ____February_____, 2009.

_____/s/_____
ATTEST_____/s/_____

Paul Caprioglio, Acting Council President

Yolanda Salazar, Assistant City Clerk